

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT BIRD, and individual;

Plaintiff,

vs.

CHRIS BIRD, an individual; VINCE BIRD
CONSTRUCTION, INC., a dissolved
Nebraska corporation; VINCE BIRD
CONSTRUCTION COMPANY, INC. 401(K)
PROFIT SHARING PLAN, and WELLS
FARGO CLEARING SERVICES, LLC, a
Delaware limited liability company;

Defendants.

8:23CV47

SHOW CAUSE ORDER

This matter comes before the court after a review of the docket. The complaint was filed on February 2, 2023. ([Filing No. 1](#)). A summons for each defendant was requested the same day. The summonses for Defendants Chris Bird, Vince Bird Construction, Inc. and Vince Bird Construction Company, Inc. 401(k) Profit Sharing Plan were all directed to Chris Bird based on his alleged positions within each entity. ([Filing Nos. 2](#), [3](#), and [4](#)). Plaintiff filed a return of service purporting to show service on these defendants on February 7, 2023. ([Filing No. 8](#)).

Chris Bird filed an Amended Answer and Counterclaim on March 23, 2023 on behalf of himself, individually. ([Filing No. 20](#)). His counterclaim included allegations against Robert Bird, individually, and as trustee of the 2002 Vince Bird Construction Company, Inc. 401(k) Plan. [Id.](#) He did not answer or otherwise respond on behalf of

Defendants Vince Bird Construction, Inc. and Vince Bird Construction Company, Inc. 401(k) Profit Sharing Plan.

Defendants Vince Bird Construction, Inc. and Vince Bird Construction Company, Inc. 401(k) Profit Sharing Plan have not answered or otherwise responded to the Complaint.

On the court's own motion and to promote judicial efficiency,

IT IS ORDERED:

1. Plaintiff Robert Bird and Defendant Chris Bird shall have until May 12, 2023 to provide their respective positions on whether Defendants Vince Bird Construction, Inc. and Vince Bird Construction Company, Inc. 401(k) Profit Sharing Plan were or were not properly served and whether default pursuant to Federal Rule of Civil Procedure 55 is or is not appropriate.
2. The failure to timely comply with this order may result in dismissal of the claims against Defendants Vince Bird Construction, Inc. and Vince Bird Construction Company, Inc. 401(k) Profit Sharing Plan without further notice.
3. Defendants Vince Bird Construction, Inc. and Vince Bird Construction Company, Inc. 401(k) Profit Sharing Plan retain the right to challenge the complaint for improper process or service of process as well as any other procedural or substantive defenses it may have.
4. In addition to the notifications provided by the court's electronic docketing system, the Clerk of the Court shall serve this order by certified mail on the following individual:

Elaine H. Bird
Registered Agent - Vince Bird Construction, Inc.
4256 IZARD Street
Omaha, NE 68131

Dated this 27th day of April, 2023.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge